

AMENDED IN SENATE JULY 8, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1328

Introduced by Assembly Member Weber

February 27, 2015

An act to add Section ~~1427j~~ 1424.5 to the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL’S DIGEST

AB 1328, as amended, Weber. ~~Discovery: prosecutorial duty to disclose information.~~ *Criminal procedure: withholding of evidence.*

Existing law requires the prosecuting attorney to disclose to the defendant or his or her attorney certain materials and information, including statements of all defendants and any exculpatory evidence, as specified. *Existing law authorizes a court to grant a motion to disqualify a district attorney from performing an authorized duty, subject to specified procedural requirements.*

This bill would ~~authorize a court in any criminal trial or proceeding in which~~ *require a court, if the court has determined* ~~determines~~ that the prosecuting attorney has ~~intentionally or knowingly failed to disclose~~ *deliberately and intentionally withheld* relevant exculpatory materials and information, as specified, to instruct the jury that the failure to disclose has occurred and that the jury shall consider the failure to disclose in determining whether reasonable doubt of the defendant’s ~~guilt exists.~~ *or information in violation of law, to inform the State Bar of California of that violation if the prosecuting attorney acted in bad faith and the impact of the withholding contributed to a guilty verdict, guilty or nolo contendere plea, or, if identified before conclusion of trial, seriously limited the ability of a defendant to present a defense.*

The bill would authorize a court to disqualify an individual prosecuting attorney from a case if the court determines that the prosecuting attorney deliberately and intentionally withheld relevant exculpatory materials or information in that case in violation of law and that the prosecuting attorney acted in bad faith. The bill would also authorize a court to disqualify the prosecuting attorney's office if there is sufficient evidence that other employees of the prosecuting attorney's office knowingly participated in or sanctioned the intentional withholding of the relevant exculpatory materials or information and that withholding is part of a pattern and practice of violations. The bill would specify that its provisions do not limit the authority or discretion of the court or other individuals to make reports to the State Bar of California regarding the same conduct, or otherwise limit other available legal authority, remedies, or actions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 1424.5 is added to the Penal Code,*
2 *immediately following Section 1424, to read:*
3 1424.5. (a) (1) *If a court determines that a prosecuting*
4 *attorney has deliberately and intentionally withheld relevant*
5 *exculpatory materials or information in violation of law, the court*
6 *shall inform the State Bar of California of that violation if the*
7 *prosecuting attorney acted in bad faith and the impact of the*
8 *withholding contributed to a guilty verdict, guilty or nolo*
9 *contendere plea, or, if identified before conclusion of trial,*
10 *seriously limited the ability of a defendant to present a defense.*
11 (2) *A hearing to consider whether a prosecuting attorney or his*
12 *or her office should be disqualified pursuant to this section shall*
13 *be initiated only upon the court's own motion.*
14 (b) (1) *Upon its own motion, a court may disqualify an*
15 *individual prosecuting attorney from a case if the court determines*
16 *that the prosecuting attorney deliberately and intentionally*
17 *withheld relevant exculpatory materials or information in that*
18 *case in violation of law and that the prosecuting attorney acted in*
19 *bad faith.*
20 (2) *The court may also disqualify the prosecuting attorney's*
21 *office if there is sufficient evidence that other employees of the*

1 *prosecuting attorney's office knowingly participated in or*
2 *sanctioned the intentional withholding of the relevant exculpatory*
3 *materials or information and that withholding is part of a pattern*
4 *and practice of violations.*

5 *(c) This section does not limit the authority or discretion of the*
6 *court or other individuals to make reports to the State Bar of*
7 *California regarding the same conduct, or otherwise limit other*
8 *available legal authority, remedies, or actions.*

9 **SECTION 1.** ~~Section 1127j is added to the Penal Code, to read:~~

10 ~~1127j. (a) In any criminal trial or proceeding in which the~~
11 ~~court determines that the prosecuting attorney has intentionally or~~
12 ~~knowingly failed to disclose relevant materials and information~~
13 ~~required under law, including Section 1054.1, except subdivision~~
14 ~~(a) of that section, and Brady v. Maryland (1963) 373 U.S. 83, the~~
15 ~~court may instruct the jury that the intentional or knowing failure~~
16 ~~to disclose the relevant materials and information occurred and~~
17 ~~that the jury shall consider the intentional or knowing failure to~~
18 ~~disclose in determining whether reasonable doubt of the~~
19 ~~defendant's guilt exists.~~

20 ~~(b) This section does not limit any other remedy available under~~
21 ~~law.~~